

**REMARKS**

Applicant respectfully **traverses** the rejection of claims 12-15 and 18-20 under 35

U.S.C. § 103(a) as being unpatentable over Focke '464 (newly cited) in view of Bohdan '677.

(For the sake of completeness, the preamble of claim 18 has been amended to recite the collar (13) which is a basic element of a hinge-lid pack as already recited in the other independent claim 19.

The subject matter of independent claims 18 and 19 is a cigarette pack of the hinge-lid type having the usual components: box part 11 and lid 12, which are joined to each other to form a unit. The special feature of the present pack of this type consists of

- *the geometric shape of the pack, namely its cross-sectional shape, as defined in features a), b), c) and d) of claim 18 for example;*
- *the alignment of the cigarette formation with respect to the shape of the pack having the aforementioned features such that the cigarettes of the formation are fixed in place by the pack's shape and, vice versa, the pack is stabilized by the alignment of the cigarette formation (features e), f), g), h) of claim 18).*

The cigarette pack having the claimed features a) to d) is at least novel over the prior art.

As will be discussed below, none of the cited references teaches or suggests a cigarette pack of the present type having the dimensions of the marginal contour of the present pack. Accordingly, the combination of features a) to d) (admittedly) define a novel cigarette pack.

Furthermore, it is neither disclosed nor even suggested by the prior art to coordinate the alignment of the cigarette formation with the shape of the pack such that the cigarette formation and the shape of the pack fit each other. Enclosed is an EXHIBIT sheet with four simplified, schematic drawings of the cross-sections of cigarette packs. Sketches a. and b. show a cigarette pack pursuant to the present invention in its standard embodiment, namely a pack having the usual pack contents of 20 standard-sized cigarettes. Of interest is the simplified drawing of sketch b. It can be seen that the cigarette positions important for the formation of the cigarettes correspond to the shape of the pack. Otherwise, cigarettes of transverse rows are positioned in the region of "buckle positions". Despite the complex contour of the pack, the coordinated formation of the cigarette group is enclosed by the pack in a "positive fit".

The illustrations of the EXHIBIT also show that a different cigarette formation, namely the 7-6-7 formation of longitudinal rows, is inappropriate for the present pack (see sketch a.). It is also shown that the cigarette pack of the "octagonal" type, to be discussed below, (shown and described in US 2002/0179464 to Focke) is directed toward the 7-6-7 cigarette formation. The cigarette formation according to the present invention based on transverse rows having different numbers of cigarettes is not appropriate for this type of pack (see sketch d.). It should also be noted that the dimensions of the packs being compared here correspond to each other with respect to their material requirements.

In summary, the pack according to the present invention including the formation of the cigarettes is shown in sketch b. The sketch a. shows the contour and dimensions of the same pack however with an imaginary group of cigarettes in the formation of a standard hinge lid pack (with right angle corners), and a standard pack of the type "octagonal" is shown in sketch c. and sketch d. The last mentioned sketch shows this standard pack (octagonal) with an imaginary cigarette formation per the invention (sketch b.).

Thus, in the assessment of the inventive achievement on which the claimed pack is based, attention should be given to the features in their entirety, i.e., the successful coordination of pack form or contour with the special (and basically known) cigarette formation. The prior art fails to provide any teaching or suggestion for this.

1. Focke relates to a special embodiment of hinge-lid cigarette packs, specifically in the embodiment with rounded corners (Fig. 1 of 3) and with beveled edges (Fig. 4 to Fig. 7). In the present context, only the latter variant of this pack is of interest. The shape and dimensions of the hinge-lid pack with beveled edges, also known worldwide as an "octagonal pack", correspond to the sketches c. and d. of the EXHIBIT. The special feature is that the beveled edges conform to the dimension of the cigarettes. Compared to a conventional cuboid-shaped hinge-lid pack having right-angled pack edges in its cross-sectional view, the free interior space formed at the pack corners or in the region of the pack edges is merely "cut off" by the beveled edges. The background of the octagonal pack of Focke is thus the reduction of the pack's "volume".

In a comparison between Focke, namely the "octagonal pack," and the present claimed invention, the dimensions of the pack and its contour are recited in the Office Action (second

paragraph of page 3) and declared to be "obvious", with no supporting grounds being provided. The remarks made in the Office Action do not recognize the significance of the claimed invention. The Office Action fails to address the question as to whether the novel approach of coordinating the alignment of cigarette formation to the shape of the pack is also "obvious". The viewpoint presented by the Examiner merely evaluates the features relating to the pack separately from the features relating to the cigarette formation and also compares them separately to the prior art, and specifically to different references. Thus, the question remains open as to whether the claimed coordinated alignment of pack and contents, with its special effect on pack stability and fixation of the cigarettes, is an innovative structure which also is non-obvious (patentable).

2. The Office Action has made a merely blanket statement in ascertaining that the claims are rejected "over Focke .. in view of Bohdan". Here, too, it fails to provide grounds for its view.

Bohdan relates primarily to a different subject. Fig. 6 shows a formation of a cigarette group corresponding to the cigarette formation of the present invention. In Bohdan, **however**, this cigarette group is arranged in a pack, which is not described or shown in any further detail, that has completely rounded side walls, obviously with a semicircular contour. The cross-sectional shape of the pack is indeed better adapted to the cigarette formation than a conventional cuboid-shaped or octagonal pack. But from Fig. 6 it can also be seen that there is no "positive-fitting" and mutual support provided by the cigarettes of the formation at the appropriately aligned pack sections. Fig. 6 thus fails to show any deliberate and effective coordination in the design of cigarette formation and pack contour.

3. Merely for the sake of completeness, Applicant would like to note that the remarks recited as final comments in paragraph 1 on page 3 of the Office Action cannot be followed. No remarks are made in Focke concerning "lid legs" in "col 4 lines 39-50" because Focke shows neither column nor line numbering. Furthermore, the tabs of the collar designated

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with reference numbers 37 and 38 (Fig. 7) are assigned to the side walls (box side wall 14, 15 and lid side wall 19, 20).

In summary, then, for the reasons presented above, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 103(a), as the Focke/Bohdan combination does not teach, suggest or predict all of the limitations of claims 12-15 and 18-20.

Thus, Applicant respectfully requests the Examiner now to **allow claims 12-15 and 18-20**; however, if for any reason the Examiner feels that the application is not now in condition for allowance, Applicant respectfully requests the Examiner to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application. In particular, the undersigned attorney would like to have the opportunity to discuss any additional claim limitations which the Examiner may feel are necessary in order to render the claims patentable over the prior art.

Applicant also files herewith a Petition (with fee) for Extension of Time of one month.

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Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

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WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

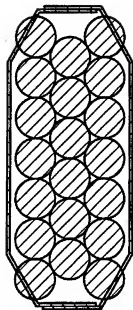
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/John H. Mion/

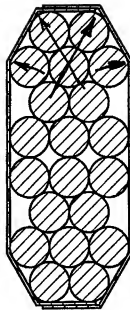
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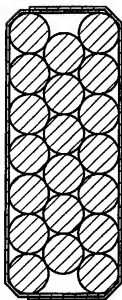
a.



b.



c.



d.

